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August 29, 2022

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Regulation ZZ; Docket No. R–1775, RIN 7100–AG34;
Regulation Implementing the Adjustable Interest Rate (LIBOR) Act

Freddie Mac is pleased to submit these comments in response to the notice of proposed rulemaking concerning the "Regulation Implementing the Adjustable Interest Rate (LIBOR) Act," published by the Board of Governors of the Federal Reserve System (the "**Board**") in the Federal Register on July 28, 2022 (the "**Proposal**").[1]

Freddie Mac was chartered by Congress in 1970 with a public mission to provide liquidity, stability and affordability to the U.S. housing market. Freddie Mac currently operates under the direction of the Federal Housing Finance Agency as our conservator. Freddie Mac is a member of the Alternative Reference Rates Committee and is actively engaged in the transition from U.S. dollar London Interbank Offered Rate ("**LIBOR**") to alternate indices, particularly the Secured Overnight Financing Rate ("**SOFR**").

Freddie Mac appreciates the efforts that the Board has undertaken to release the Proposal and does not underestimate the difficulty of promulgating a regulation that would implement the Adjustable Interest Rate (LIBOR) Act (the "**Act**"). We commend the Board for the hard work it has done so far and strongly support the adoption of the Proposal. To provide increased clarity, as discussed below, we recommend that the Board make one technical change to the definition of a "covered GSE contract."

Commercial Mortgage-Backed Security

Under the Proposal, a "covered GSE contract" includes a contract that is "(i) a commercial or multifamily mortgage loan or (ii) a commercial or multifamily mortgage-backed security." The first clause identifies the type of *loan* and the second clause identifies the type of *security*. A commercial mortgage-backed security, or "**CMBS**," in clause (ii) is generally understood to be a security backed by mortgages on property types such as commercial real estate or multifamily dwellings. While there is no standard or official definition, a CMBS is generally not understood to be backed by consumer loans.

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[1] 87 Fed. Reg. 45268 (July. 28, 2022)

Freddie Mac Single-Family Securitizations

Freddie Mac has issued or guaranteed a variety of forms of securities backed by single-family mortgages. Some of these securitizations have complex structures in which a pool of mortgage loans secured by first liens on residential properties are the underlying assets for one or more mortgage pass-through certificates ("**PCs**") in which Freddie Mac is not always a party. Those PCs were assigned to Freddie Mac which then issued its own structured pass-through certificates ("**SPCs**") backed by the PCs. Many of the mortgage loans underlying the PCs, and the corresponding interest rates of the PCs and SPCs, are indexed to LIBOR. For purposes of the Act and the Proposal, although Freddie Mac is the Determining Person of the SPCs, a third-party trustee, and not Freddie Mac, may be the Determining Person of many of the PCs.

Selection of Benchmark Replacements

Since the loans pooled into the PCs are mortgages on residential properties, they would be consumer loans for purposes of the Act and the Proposal. The selection of the benchmark replacement would be made by the Determining Person at the loan level, which would be the loan servicer or the trustee of the PCs. In turn, since the underlying assets of the PCs and SPCs are consumer loans, Freddie Mac believes that the PCs and SPCs are residential mortgage-backed securities and not CMBS. However, since Freddie Mac may not be the Determining Person for many of the PCs, a third-party trustee could determine that the entire complex securitization constitutes a CMBS under clause (ii) of the definition of covered GSE contract and could therefore select a benchmark replacement applicable for a covered GSE contract. That determination would result in a benchmark replacement for the PCs inconsistent with the replacements for the consumer loans and the SPCs. As a result, the 30-day Average SOFR rate selected for the PCs would not match the CME Term SOFR rates selected as the benchmark replacements for the underlying consumer loans and SPCs, which could give rise to unintended cash flow insufficiencies or excesses, depending on the structure of the securitization.

Recommendation

Considering the complex nature of many of Freddie Mac's single-family securitizations that might incorrectly be categorized as a CMBS, Freddie Mac respectfully requests that the Board revise clause (ii) of the definition of "covered GSE contract" to be "a commercial or multifamily mortgage-backed security (other than a security backed by consumer loans)." That change to the wording in the definition would help reduce or eliminate the possibility that a complex securitization of residential mortgage loans experiences an improper or inconsistent selection of benchmark replacements for LIBOR.

In addition, Freddie Mac supports having the final rule address the ambiguity discussed in the Proposal regarding synthetic LIBOR and LIBOR contracts with fallback provisions that lack an express non-representativeness trigger.

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Freddie Mac appreciates the opportunity to provide its comments in response to the Proposal. Please contact the undersigned if you have any questions or would like further information.

Sincerely,

Ameez Nanjee

Digitally signed by Ameez Nanjee
Date: 2022.08.29 08:53:00 -04'00'

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